HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, April 21, 2015
84th Legislature, Number 54
The House convenes at 10 a.m.
Part Two

Twenty bills are on the daily calendar for second-reading consideration today. The bills analyzed in Part Two of today's *Daily Floor Report* are listed on the following page.

Alma Allen
Chairman
84(R) - 54

HOUSE RESEARCH ORGANIZATION

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Tuesday, April 21, 2015
84th Legislature, Number 54
Part 2

SUBJECT: Allowing religious objections to photo ID for homestead exemptions

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Parker, C. Turner, Wray

1 nay — Springer

WITNESSES: For — Brent South, Texas Association of Appraisal Districts

Against — None

On — Sands Stiefer, Harris County Appraisal District; (*Registered, but did not testify*: Mike Esparza, Comptroller's Office)

BACKGROUND: Tax Code, sec. 11.43 provides the application process for homestead exemptions. An application must:

- list each owner of the residence homestead and the interest of each owner;
- state that the applicant does not claim an exemption on another residence homestead;
- state that each fact contained in the application is true; and
- include a copy of the applicant's driver's license or state-issued personal identification certificate.

Sec. 11.43(j)(4) excepts from the personal identification requirement a resident of a facility providing services related to health, infirmity, or aging or an individual certified for participation in the attorney general's address confidentiality program.

DIGEST: CSHB 806 would except from the personal identification requirement in the homestead exemption application process a person who had a religious objection to being photographed.

To gain the exception, the applicant would have to include with the

application an affidavit stating that:

- the applicant was unable to obtain a driver's license or state-issued personal identification certificate due to the religious objection and had consistently refused to be photographed for any governmental purpose; and
- the property for which the applicant claimed a homestead exemption was the applicant's residence homestead.

This bill would take effect September 1, 2015, and would apply only to an application for a residence homestead exemption filed on or after that date.

SUPPORTERS SAY:

CSHB 806 would allow individuals with certain sincerely held religious beliefs against being photographed to claim the tax exemptions to which they are entitled. While photographs are needed to obtain state-issued identification, some with religious objections to being photographed are able to purchase land because they carry identification without a photo, such as a Social Security number or birth certificate. These individuals cannot claim homestead exemptions, however, because state law requires that they present state-issued identification. This bill would amend the Tax Code to remove this unfair burden on individuals who hold these religious beliefs.

The bill would not increase the potential for fraud. Its language mirrors that of other religious exceptions present in the Tax Code and other statutes, such as voter identification law. Detecting any fraudulent behavior would require only a quick check of a state database to see if the person had a driver's license. Fraudulent homestead exemption applications are more likely to come from property owners with driver's licenses who own rental property or multiple homes that do not qualify for the tax exemption. Moreover, lying on an affidavit is considered perjury, which carries hefty penalties, making it even less likely that someone would try to fraudulently apply for a homestead exemption under this provision.

Current law already provides for two exceptions to the state-issued identification requirement, so this bill would not break new ground or

present an opportunity for fraud that does not exist already.

OPPONENTS SAY:

CSHB 806 could have implications that the Legislature should be careful to consider. For instance, the bill could increase the potential for fraudulent homestead exemption applications. Because not all appraisal districts can verify each application, instances of fraud could slip through the cracks, possibly allowing undocumented immigrants to receive homestead exemptions or owners of multiple homes to claim multiple exemptions.

Also, because land transactions currently require some form of identification to transfer the title, an applicant with a religious objection to being photographed who acquired the land through such a transaction presumably would have presented identification to the appraisal district verifying the applicant's residence.

OTHER OPPONENTS SAY:

CSHB 806 should go further and include an exception for certain elderly and disabled individuals who cannot obtain state-issued personal identification because they are homebound or otherwise unable to leave their residence.

NOTES:

CSHB 806 differs from HB 806 as introduced in that the filed bill would have required the affidavit to state that the applicant could not obtain identification because of "a sincerely held religious belief." The committee substitute would require the affidavit to state that "the applicant has a religious objection to being photographed and has consistently refused to be photographed for any governmental purpose."

SUBJECT: Making the tax exemption on landfill gas conversion facilities permanent

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Parker, Springer, C. Turner, Wray

1 nay — D. Bonnen

WITNESSES: For — Marty Ryan, Montauk Energy; Luke Morrow, Morrow Renewables; Kory Ryan; Evan Williams; (*Registered, but did not testify*: Eddie Solis, City of Arlington)

Against — Donald Lee, Texas Conference of Urban Counties

On — Cyrus Reed, Sierra Club Lone Star Chapter

BACKGROUND: In 2013, the 83rd Legislature enacted HB 1897 by Eiland, which created a property tax exemption for landfill-generated gas conversion facilities. This exemption is set to expire December 31, 2015 and applied only to the five projects in progress at the time of the bill's enactment. Specifically, for tax years 2014 and 2015, the bill exempted real and personal property located on or near a landfill and used to collect, compress, transport, process, and deliver gas generated by the landfill.

DIGEST: HB 994 would make permanent the property tax exemption on landfill-generated gas conversion facilities and allow the exemption to be applied to projects begun after January 1, 2014.

This bill would take effect January 1, 2016, and would apply only to property taxes imposed during tax years beginning on or after that date.

SUPPORTERS SAY: HB 994 would provide critical support to an industry that brings many economic and environmental benefits both to localities and to the state as a whole.

Environmental impact. Federal and state regulations require large

landfills to dispose of methane gas. Without landfill gas conversion facilities, the best available control technology for methane is to burn it, which results in various emissions that are harmful to public health and the environment.

However, landfill gas conversion facilities are economically vulnerable industries because they have fixed costs but highly variable revenue. Revenues depend on a variety of factors outside their control, including drought conditions and natural gas prices. This, combined with the enormous capital investment required means that every cost cut greatly increases the survivability of a project.

Property taxes represent one fixed cost that could make some projects unsustainable. Therefore, the Legislature should make permanent the tax exemption, allowing more of these facilities to be built.

Additionally, landfill gas conversion facilities can extend the life of landfills by up to 10 years, minimizing environmental degradation and the need to dedicate additional land to holding solid waste.

Economic impact. Landfill gas conversion facilities have the advantage of taking something harmful and polluting (methane gas) and turning it into a usable commodity. This creates jobs and millions of dollars of economic activity and tax revenue that offsets any revenue local taxing districts may not be able to collect because of the initial exemption.

Local taxing districts would not be adversely affected because they would receive tax revenue throughout the life cycle of a conversion facility — from economic activity sparked by construction to the jobs brought to the area. One project brought in an extra $3 million in revenue for the city from natural gas royalties alone. If the Legislature allowed these exemptions to end, it would add costs to the projects, potentially shuttering an otherwise profitable and desirable industry.

This bill would not subvert the intent or success of the current tax exemption scheme. These emissions are naturally occurring byproducts of the landfill itself. Landfill gas conversion facilities are operating as renewable energy producers, converting this byproduct into natural gas.

Additionally, because of the massive capital costs involved in constructing a facility, it is not reasonable to expect that a private operator would transfer the title to a landfill to obtain the exemption.

Many other states provide property tax exemptions for these facilities. Texas should recognize the environmental and economic benefits and make the property tax exemption on landfill gas conversion facilities permanent.

OPPONENTS SAY:

HB 994 unnecessarily would set a dangerous precedent that could lead to the exemption from taxation of billions of dollars of property used by various businesses to clean up pollution caused by other businesses.

Environmental impact. Any environmental benefits attributed to this bill are predicated on the ability of a tax exemption to stimulate the construction of additional facilities that otherwise would not be built. However, because these businesses are for-profit entities that should be able to sustain themselves, there is no evidence to support this projection. This bill would extend an unnecessary incentive, decreasing revenues to local taxing districts with no corresponding reward. School districts also would be affected because they would not be held harmless for any part of this revenue loss.

Economic impact. This bill would subvert the original intention of the creation of these sorts of tax incentives. They originally were intended as a means of reducing the regulatory burden. For instance, if a company was required to conduct environmental impact mitigation, the tax exemption would apply to equipment purchased to fulfill that requirement so as not to make the regulation excessively burdensome. Historically, the law has treated pollution control equipment and equipment used in economic production differently. The bill would break this dichotomy, setting a dangerous precedent.

Specifically, this bill would apply a tax exemption to a business in its primary line of work. While the industry may provide some social good, not all industries that have positive effects on the environment should receive tax benefits. This bill would create a precedent for granting tax exemptions to for-profit pollution control businesses merely because of

the positive impact they have. This could lead to the exemption of billions of dollars of other property used in businesses, such as recycling and oil and gas spill cleanup crews.

In addition, these exemptions already are available to landfill gas conversion facility owners. To be eligible for the exemption, the owner merely would need to transfer to the landfill the title to the facility and go through an application process with the Texas Commission on Environmental Quality.

In short, this bill would be a means of getting around a process and precedent that has worked for decades. The Legislature should not subvert that success to support an industry that would exist without the exemptions.

NOTES:

The Legislative Budget Board's fiscal note indicates that there would be no significant impact to general revenue-related funds. The fiscal note also estimates that there would be a slight decrease in revenue to some cities, counties, and other special taxing districts.

The Senate companion bill, SB 1069 by West, was referred to the Senate Finance Committee on March 16.

SUBJECT: Requiring meteorological towers to comply with marking requirements

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 7 ayes — T. King, C. Anderson, Cyrier, González, Rinaldi, Simpson, Springer

0 nays

WITNESSES: For — Luke Boedeker, Mitch Probasco, Chris Shields, and Jason Wooten, Texas Agricultural Aviation Association; Carol Jennings

Against — None

On — Jeffrey Clark, The Wind Coalition; (*Registered, but did not testify*: Darran Anderson, Texas Department of Transportation)

BACKGROUND: Any structure taller than 200 feet above ground level is subject to Federal Aviation Administration regulations.

DIGEST: CSHB 946 would define a meteorological evaluation tower as a structure that:

- was self-standing or supported by guy wires;
- was not more than six feet in diameter at the base; and
- included equipment to document whether a site had sufficient wind resources for the production of wind energy; and

A structure adjacent to a building or within the curtilage of (immediately surrounding) a residence would not fall under the definition.

Any meteorological evaluation tower at least 50 feet tall but not more than 200 feet above ground level would have to be painted in equal alternating bands of aviation orange and white, with orange at the top, and have orange marker balls installed in accordance with Federal Aviation Administration standards. Any guy wires used to support the tower would be required to have seven-foot-long safety sleeves that extended from

each anchor point.

The bill would require the Texas Department of Transportation by rule to create a registry of meteorological evaluation towers. Anyone who owned, operated, or erected a tower would be required to provide notice and register the tower with the department.

Failure to comply with the requirements of CSHB 946 would constitute a class C misdemeanor (maximum fine of $500), unless that failure to comply caused a collision resulting in bodily injury or death, in which case the owner or operator would be guilty of a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000).

The bill would take effect September 1, 2015. Its provisions would apply to any tower erected before, on, or after the effective date, except that any tower erected before the effective date would not be required to comply with the marking requirements until September 1, 2016.

SUPPORTERS SAY:

CSHB 946 would help protect low-altitude pilots against collisions with meteorological evaluation towers. These towers traditionally are made of galvanized steel, which is a light color when unpainted that easily blends into the sky on a hazy or overcast day. Because meteorological evaluation towers can be constructed in a matter of hours, a pilot could fly a route the pilot had flown for years and on the return trip find that a tower had been constructed in the middle of the route. Meteorological evaluation towers pose a serious safety hazard, and pilots die every year from collision involving unmarked towers.

Because of the danger posed by unmarked towers, the National Transportation Safety Board (NTSB) in 2007 created a list of guidelines for marking a meteorological evaluation tower for increased visibility. The marking requirements proposed in the bill are based on these guidelines. While some companies in the wind-energy industry already are beginning to comply voluntarily with the NTSB recommendations, the bill would provide clear guidelines on whether a tower met the legal requirements for a sufficiently visible structure, which could provide reassurances for the owners and operators of towers.

The criminal penalties are necessary to ensure that meteorological evaluation tower owners and operators comply with the bill's requirements. After a low-altitude pilot collided with a cell phone tower in 2000, the 78th Legislature enacted SB 1261 by Armbrister in 2003, which created notice and marking requirements for certain towers no more than 200 feet tall. However, the law has no enforcement clause, and the Texas Agricultural Aviation Association (TAAA) has not received notice of a low-level cell phone tower being constructed since 2009.

Thirteen states have enacted legislation requiring meteorological evaluation tower markings similar to CSHB 946, and most include a misdemeanor enforcement mechanism. The TAAA keeps in close contact with its sister organizations in these states, as well as the state regulatory bodies tasked with enforcing the legislation, and has not found one instance of noncompliance with marking requirements in states with an enforcement clause. By contrast, compliance is practically nonexistent in the three states without enforcement provisions.

Concerns that the penalties place meteorological evaluation tower owners and operators at undue risk are exaggerated. It is an affirmative defense to a misdemeanor prosecution that a corporation acted with due diligence to comply with the law. If a meteorological evaluation tower owner or operator had done everything possible to comply with the requirements of CSHB 946, it is unlikely that a court would find the owner or operator in violation of the law if vandalism or a weather event damaged their meteorological evaluation tower and knocked its markings out of compliance.

OPPONENTS SAY:

This bill is unnecessary because the wind-energy industry has already begun to comply voluntarily with the National Transportation Safety Board's tower marking guidelines. After a company in California settled with the family of an agricultural pilot for $6.7 million in September 2014, the manufacturers, owners, and operators of meteorological evaluation towers increasingly have marked their towers.

The criminal penalties in CSHB 946 would be too harsh to impose on the owners and operators of meteorological evaluation towers who unintentionally violated the law. A corporation found guilty of a class C

misdemeanor can be charged a $2,000 fine, and a class B misdemeanor conviction could cost a corporation as much as $10,000. Because of the specificity of marking and painting requirements, it is possible that an act of vandalism or a weather event could damage the markings on a tower, exposing owners or operators to a substantial criminal penalty when they did nothing wrong.

NOTES:

HB 946 as introduced would have applied to a broader category of towers. The committee substitute replaced the term “tower” with “meteorological evaluation tower” and defined the term.

SUBJECT: Insurance premium assistance for hemophilia medical treatment

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Sheets, Vo, Workman

0 nays

WITNESSES: For — Brendan Hayes, Texas Bleeding Disorders Coalition; (*Registered, but did not testify*: Shelley Clawson; Rachel Neyland)

Against — None

On — (*Registered, but did not testify*: Carol Labaj, Department of State Health Services; Jan Graber, Texas Department of Insurance)

BACKGROUND: Hemophilia is a rare blood disorder, usually inherited, in which the blood does not clot properly. Health and Safety Code, ch. 41 establishes the Hemophilia Assistance Program within the Department of State Health Services (DSHS) to provide financial assistance to individuals unable to pay the entire cost of their treatment.

To be eligible, a person must be at least 18 years old and have an income level at or below 200 percent of the federal poverty guidelines. The House-passed budget bill includes $323,477 in each year of fiscal 2016-17 for hemophilia services.

DIGEST: CSHB 1038 would authorize DSHS to provide insurance premium payment assistance to eligible persons with hemophilia. The premium payments would be in addition to an existing DSHS program that provides financial assistance for eligible persons to obtain blood, blood derivatives and concentrates, and other substances for use in medical or dental facilities or in the home.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1038 could allow DSHS to help more individuals with costly hemophilia treatments pay for insurance premiums with the existing funds that historically have paid for blood factor replacement products. The bill would not seek additional funding, but would be a cost-effective use of existing funds to provide better health care to more people needing treatment for hemophilia. Having insurance coverage could help these individuals adhere to treatment plans and lessen their risk of suffering permanent damage that could result in their being placed on disability and unable to work.

Individuals affected by hemophilia have an increased risk for brain trauma, serious bruising, internal bleeding, and even death. Treatment is done by infusing commercially prepared blood factor concentrates. Treatment can be as expensive as $300,000 per year for severely affected patients.

Currently, only four individuals are participating in the Hemophilia Assistance Program. One reason for the low participation may be the program's $25,000-per-person cap on annual benefits. Individuals may decide not to apply if the program is only going to help with one or two months of treatment. Additionally, the program recently lowered its age requirement from 21 to 18. This change is expected to increase participation in the program.

If the program were used to help people pay insurance premiums rather than for the treatments themselves, it could serve up to 27 people, some of whom may not qualify for subsidies to purchase insurance under the federal Affordable Care Act.

The statutorily created Texas Bleeding Disorders Advisory Council has recommended that the program be allowed to pay for insurance premiums to give individuals access to comprehensive health insurance coverage and provide blood factor replacement products year-round while decreasing the individual's cost to the Hemophilia Assistance Program. As an added benefit, the council said in a report to the 83rd Legislature, individuals with full insurance coverage could lessen the financial impact of

uncompensated care on hospital emergency departments.

OPPONENTS SAY:

It is unclear whether there is a need for an expansion of the Hemophilia Assistance Program. The program did not spend all of its appropriated funds during fiscal 2012-13 and currently serves only four people. The low level of participation could be an indication that most low-income individuals with hemophilia do not need the program because they already have obtained health insurance coverage.

SUBJECT: Classifying eggs as a farm product for property tax exemption purposes

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 7 ayes — T. King, C. Anderson, Cyrier, González, Rinaldi, Simpson, Springer

0 nays

WITNESSES: For — (*Registered, but did not testify*: James Grimm and Joe Morris, Texas Poultry Federation)

Against — None

BACKGROUND: Tax Code, sec. 11.16 provides a property tax exemption for farm products, such as livestock and poultry, that are "in the hands of the producer." Sec. 11.16(b) defines this term to mean livestock or poultry under the ownership of the person who is financially providing for the physical requirements of the livestock and poultry on January 1 of the tax year.

DIGEST: HB 275 would add chicken eggs, whether they were packaged or not, to the category of farm products exempted from property taxation when they were in the hands of the producer.

The bill would take effect on January 1, 2016, and would apply to taxes imposed on or after that date.

SUPPORTERS SAY: HB 275 would clarify existing law about whether eggs in the hands of egg producers qualify as a farm product exempt from property taxation. Tax Code, ch. 11 currently includes poultry in the list of items that qualify as farm products without mentioning eggs. This definition leaves a gray area regarding the status of eggs. Some areas of state law already classify eggs as poultry, but the Tax Code does not. Because standard industry practice is to treat eggs as a farm product for tax purposes, the vast majority of potential revenue from property tax on eggs already is not being collected by cities and counties. According to the fiscal note, any lost revenue to

local school districts, and by extension the state, would not be significant.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The Senate companion, SB 732 by Nichols, was referred to the Senate Finance Committee on February 25.

SUBJECT: Rate-setting and evaluation of PACE program compared to STAR+PLUS

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Raymond, Rose, Keough, Klick, Naishtat, Peña, Price, Spitzer

0 nays

1 absent — S. King

WITNESSES: For — Carl Isett, Texas PACE Association

Against — None

On — (*Registered, but did not testify*: Elisa Garza, Department of Aging and Disability Services; Gary Jessee, Health and Human Services Commission; Jennifer Quereau, Legislative Budget Board; Rachel Butler)

BACKGROUND: Texas operates the Program of All-inclusive Care for the Elderly (PACE) through the Department of Aging and Disability Services (DADS). The program was established and is governed by Human Resources Code, sec. 32.053. PACE offers capitated managed care to people age 55 or older who are eligible for nursing facility care but live in the community at the time they enroll in the program. The program serves individuals who are eligible for Medicare, Medicaid, or both, and it provides all preventive, primary, acute, and long-term care services.

STAR+PLUS is a program operated by the Health and Human Services Commission (HHSC) that provides acute and long-term care through a Medicaid managed-care system. This program serves certain adults who are age 21 or older and have a disability.

The 2014-15 general appropriations act authorized DADS to use appropriated PACE funds to serve up to 96 additional participants at existing PACE sites and to create three new PACE sites serving up to 450 participants total beginning in fiscal year 2015. The general appropriations act stated that if the funds appropriated to DADS to serve these additional

populations were insufficient, HSSC would be directed to transfer certain Medicaid funds to pay for this growth.

DIGEST:

HB 3823 would link the reimbursement rates of PACE to those of the STAR+PLUS Medicaid program, modify the methods for collecting PACE and STAR+PLUS Medicaid program data, and require an evaluation of the PACE program to compare PACE costs and care outcomes to STAR+PLUS Medicaid program outcomes.

Reimbursement rates for PACE. HB 3823 would direct the Health and Human Services Commission (HHSC) to set a provider reimbursement rate for the PACE program that would be adequate to sustain the program, would not exceed reasonable and necessary costs to operate the program, and would be cost-neutral when compared to costs for serving a similar population in the STAR+PLUS Medicaid program.

The bill would require HHSC to consider collecting historical cost and utilization data from PACE providers to set the PACE reimbursement rate required to be adequate but reasonable. The bill also would require the agency to consider STAR+PLUS Medicaid costs, including capitation and fee-for-service payments, for a similar population to the one served by PACE to set the upper limit for PACE reimbursement rates.

Data collection. The Department of Aging and Disability Services (DADS) and HHSC would be required to collaboratively modify data collection methods used to evaluate the PACE and STAR+PLUS programs to allow for the comparison of recipient outcomes, including complaints and recipient hospital admissions, between programs. The bill also would require changes to survey instruments used in this data collection.

Evaluation and reporting. The bill would require DADS and HHSC to collaboratively evaluate Medicaid costs and client outcomes between PACE and STAR+PLUS, mandating that the evaluation compare similar recipient types between the programs and account for geographic differences and recipient acuity. The evaluation also would have to contain an assessment of potential future cost implications if HHSC was unable to calculate a reimbursement rate for PACE that met the

requirements of the bill.

HHSC also would be required to compile a report on the findings of this evaluation and submit the report by December 1, 2016, to the Legislative Budget Board and governor. The evaluation and report provisions of the bill would expire in September 2017.

HB 3823 would require a state agency needing a waiver or authorization from a federal agency before implementing a provision of the bill to request that waiver or authorization. The affected state agency could delay implementation of affected provisions in the bill until the agency received the waiver or authority.

HB 3823 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

HB 3823 would instigate needed consideration of the Program of All-inclusive Care for the Elderly (PACE) and its provider reimbursement rate methodology.

PACE, which uses a capitated managed care model, has been found to be a lower-cost alternative to serving high-risk elderly patients when compared to the Medicaid fee-for-service reimbursement system. However, it is not clear whether PACE also could be a lower-cost or cost-neutral alternative to the STAR+PLUS program, a Medicaid managed care program that can serve a similar population to PACE. STAR+PLUS has expanded in the state, and the fee-for-service Medicaid reimbursement model has shifted toward managed care. Therefore, comparing and aligning provider reimbursement rates for PACE clients with those of STAR+PLUS, rather than fee-for-service rates, would be a better strategy.

Understanding the similarities, differences, issues, and outcomes for both programs would better enable the state to make planning and funding decisions for PACE and STAR+PLUS. HB 3823 is necessary to determine the potential fiscal impact to the state of using STAR+PLUS Medicaid funds to help pay for the additional PACE participants as authorized by the 2014-15 general appropriations act. While the two

programs arguably serve different populations, the bill would ensure that the comparison and evaluation of PACE and STAR+PLUS for rate-setting, costs, and outcomes purposes involved similar populations of individuals served by the two programs.

Aligning data collection and evaluating the costs and care outcomes for both programs also would yield important information about how to effectively assess the programs in relation to one another. Because of some evidence showing PACE to have better outcomes than other programs serving this population, HB 3823 could highlight the need to better fund or expand the PACE program to serve more individuals.

HB 3823 contains provisions that ensure that the Medicaid reimbursement rates for PACE are sufficient to sustain the program but also would not be enough to exceed what is necessary and reasonable to operate the program. While the bill would tie PACE rates to those of STAR+PLUS before evaluating and comparing the two programs, setting both a floor and ceiling for the reimbursement rate would ensure the program was both sustainable and cost-effective.

OPPONENTS SAY:

HB 3823 would set a rate for PACE by comparing it to STAR+PLUS without fully understanding the differences between the two programs. Instead, the bill should mandate doing the study first and then consider setting PACE rates based on STAR+PLUS once the differences between the two programs could be fully appreciated and understood.

Even with the bill's effort to isolate a STAR+PLUS population segment equal to PACE's population for comparison, there are several other factors that are not controlled for, which would make this comparison ineffective. For example, PACE provides a full spectrum of care and bears the risk for highest-need individuals' cost of care increasing while these individuals are in a PACE program. Programs like STAR+PLUS do not cover all costs of care for individuals, they treat in the aggregate a less high-need population, and they have a flexible coverage structure that places risk for increased cost of care on the state.

Linking and comparing costs between these two programs could inaccurately reflect negatively on PACE. PACE is an exceptional program

that has shown better outcomes for enrollees than similarly situated individuals not enrolled in PACE, including lower hospitalization and mortality rates. The bill's rate-setting methodology and the required comparison with STAR+PLUS could unfairly result in an insufficient reimbursement rate, restricted growth of the program, or even the end of the PACE program entirely.

NOTES:

In its fiscal note, the Legislative Budget Board has estimated that there would be no significant fiscal impact to the state for the analysis and reporting requirements of HB 3823. Any fiscal implications to the state that could result from setting new rates for PACE could not be determined at this time, as it is unclear how they would compare to current rates, according to the LBB.

SUBJECT: Modifying fees for county-issued junkyard or salvage yard licenses

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 7 ayes — Coleman, Farias, Burrows, Romero, Schubert, Spitzer, Wu

2 nays — Stickland, Tinderholt

WITNESSES: For — Rhonda Tiffin, Webb County; (*Registered, but did not testify*: Patti Jones, Lubbock County; Will Jones, McLennan County; Rick Thompson, Texas Association of Counties; Donald Lee, Texas Conference of Urban Counties; John Brieden, Washington County)

Against — None

BACKGROUND: Transportation Code, ch. 396 regulates junkyards and automotive wrecking and salvage yards. Under sec. 396.041, the commissioners court of a county may by ordinance require a junkyard or automotive wrecking and salvage yard to be licensed. The ordinance may impose a licensing fee of no more than $500 on junkyards or automotive wrecking and salvage yards that operate in Harris County, and an ordinance in Tarrant County may charge a licensing fee of no more than $150. Other counties may charge a licensing fee of $25.

County licensing does not apply to a recycling business or a junkyard or automotive wrecking and salvage yard that is located in and regulated by a municipality or that was operating before June 1, 1987.

DIGEST: HB 2007 would modify current law governing the issuance and renewal of a county-issued license to a junkyard or automotive wrecking and salvage yard. An ordinance adopted by the commissioners court of a county with a population of less than one million may impose a fee for such a license in an amount necessary to pay for the administration and enforcement of that ordinance.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 2007 would allow for certain counties to partially recover the cost of multiple failed inspections of junkyards and automotive wrecking and salvage yards. In many counties, these operations must satisfy a county inspection and pay a $25 application fee for a license. Due to the size of certain Texas counties, inspectors may travel more than 100 miles to inspect a site, and an operation may have multiple inspections before being approved for a license.

A site that has had multiple failed inspections can cost the county significant time and money in transportation and personnel costs. HB 2007 would give counties the opportunity to recoup the costs of multiple failed inspections by permitting county-issued licensing fees to cover costs necessary to administer or enforce licensing requirements.

OPPONENTS SAY:

HB 2007 would permit counties to impose an additional fee on private business owners. Businesses already must pay a multitude of taxes and fees to operate in the state, which restricts their ability to build revenue and grow.

OTHER OPPONENTS SAY:

HB 2007 would not go far enough to ensure that these operations become compliant. This bill would not decrease the number of junkyards or automotive wrecking and salvage yards out of compliance with state code because the fee associated with the inspections likely would be inconsequential and not effective to push operators into compliance.

SUBJECT: Modifying minimum capital, exemption requirements of trust companies

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 6 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Stephenson

0 nays

1 absent — Pickett

WITNESSES: For — (*Registered, but did not testify*: John Heasley, Texas Bankers Association)

Against — None

On — (*Registered, but did not testify*: Bob Bacon and Everette Jobe, Texas Department of Banking)

BACKGROUND: The state's trust companies are governed by Finance Code, Title 3, subtitle F.

Finance Code, sec. 182.008 stipulates that the banking commissioner cannot issue a charter to a trust company with less than $1 million in restricted capital. According to sec. 184.101, the trust company must have at least 40 percent of its restricted capital invested in liquid assets, which are investments that are readily marketable and can be converted to cash within four business days.

Trust companies in Texas are considered insolvent if they meet one of several criteria outlined in sec. 181.002. For example, a company is insolvent if it has less than $500,000 in equity capital as determined under regulatory accounting principles.

Finance Code, sec. 182.011 provides an exemption to these capital requirements for certain trust companies. To obtain an exemption, a trust company must file an application in writing with the Texas Department of Banking, which may grant the exemption if it finds that the company does

not conduct business with the public. The department may attach conditions and requirements to the exemption. Under sec. 182.013, the trust company must file an annual certification to maintain their exemption confirming that the trust company is in compliance with the exemption requirements. The certification is not valid unless acknowledged by the department.

Trust companies that were chartered before 1997 have maintained an exemption to these capital requirements through a grandfather clause in Finance Code, sec. 182.019.

Under sec. 182.015, an exempt trust company that is sold or transferred cannot maintain its exempt status.

DIGEST:

CSHB 3308 would modify several sections of Finance Code, Title 3, subtitle F related to minimum capital requirements for the state's trust companies and exemptions from these requirements.

Capital requirements. The banking commissioner would not be allowed to issue a charter to a trust company with a restricted capital of less than $2 million. Unless granted an exemption by the banking commissioner, trust companies would be required to maintain an amount of liquid capital that was at least 50 percent the amount of its restricted capital.

A trust company would be considered insolvent if its equity capital, the amount by which the total assets of a trust company exceed its total liabilities, was 50 percent or less than the amount of its restricted capital.

Trust companies would have until September 1, 2020, to meet all of the bill's capital requirements. Trust companies would have until September 1, 2016, to meet the bill's 50 percent liquidity requirement. The bill would authorize the Finance Commission to adopt rules specifying a procedure for ratable increases in restricted capital and for deferrals and extensions of the requirements for a trust company acting in good faith.

Exempt status. Trust companies may qualify for exempt status if:

- the trust company had only family clients and transacted business only on their behalf;
- the trust company was wholly owned by family members;

- the trust company did not hold itself out to the general public as a corporate fiduciary for hire; and
- the trust company did not transact business with the general public.

The bill would define "family client" and "family member" and would allow the Finance Commission to further define in rule who could qualify as a family client.

Exempt trust companies would be required to file an annual certification that they are in compliance with the exemption requirements, in addition to a record of the trust company's condition and income. The bill would remove the requirement that a trust company's certification must bear an acknowledgement stamped by the department to be valid. The Texas Department of Banking could inspect the certification annually or otherwise as it deemed necessary.

The bill also would add a procedure for exempt trust companies to be sold or transferred without losing their exempt status. The person acquiring the trust company would be required to file a certification with the banking commissioner that the trust company would continue to comply with the exemption requirements. The Texas Department of Banking could examine or investigate the trust fund and the person acquiring it to verify the certification.

Examination of trust companies. CSHB 3308 no longer would allow the banking commissioner to delay an examination for up to six months. However, the commissioner could examine trust companies on a periodic basis as required by rule or policy. Current law already allows the commissioner to conduct examinations annually or as considered necessary to efficiently enforce the law while still safeguarding the interests of clients, creditors, and shareholders.

Trust companies would be required to file an annual statement of condition and income. The statement of condition and income would be public record except for:

- statements of family trust companies exempted under the bill;
- statements of trust companies chartered before 1997; or
- portions of the statement that the banking commissioner designates

confidential.

Grandfather clause. Trust companies that are exempt because they were chartered before 1997 would lose their exempt status either September 1, 2020, or when they are sold or transferred. Trust companies that lose their exempt status in this way could apply for an exempt status under the provisions contained in the bill.

Trust companies that are exempt because they were chartered before 1997 would have to increase their restricted capital to $250,000 by September 1, 2020.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 3308 would better reflect the size, complexity, and growth of the modern banking industry in Texas by updating capital requirements for trust companies.

The amount of restricted capital set by the Department of Banking for each trust company serves as a benchmark to ensure the financial health of that company. This number is a quick guide that the state, the public, and the shareholders of the trust company can look at to gauge how much the trust company is supposed to own in equity capital and liquid assets. Some of the public trust companies in Texas now have hundreds of millions of dollars in assets. Requiring trust companies maintain at least $500,000 in equity capital is no longer a realistic way to ensure the financial health of a trust company.

Changing the equity capital requirement to 50 percent of a trust company's restricted capital would be a more flexible approach to better guarantee the company's soundness. The 50 percent liquidity requirement and minimum $2 million in restricted capital would make trust companies more financially secure. The bill also would modernize the exemption process and would provide clear-cut guidelines for trust companies to qualify as exempt from capital and disclosure requirements.

It is unlikely that the new capital requirements would cause difficulties for many trust companies. The Texas Department of Banking has not chartered a trust with less than $250,000 in capital since 1998. Of the 20

public trusts in the state of Texas, only three have less than $2 million in capital, and none of the 20 currently would be unable to meet the liquidity requirement in the bill.

Ending the exemption by 2020 would give trust companies ample time to meet the new capital requirements. For exempt and non-exempt trust companies alike, the bill contains several clauses that allow and even encourage the Texas Banking Department and the Finance Commission to work with a struggling trust company.

The bill would allow for flexibility in the way the department conducted examinations of trust companies. While CSHB 3308 no longer would allow the commissioner to delay an examination, the commissioner could set a period longer or shorter than a calendar year for regular examinations. This would allow the Texas Department of Banking to base its examination schedule on the most efficient use of its resources.

OPPONENTS SAY:

CSHB 3308 would establish capital requirements that smaller trust companies may have difficulty meeting. Trust companies often are used for estate planning and wealth management, so a trust company might be a shareholder or manager's largest, or in the case of an estate, only, pool of assets. The increased liquidity and restricted capital amount could prove to be a hardship for smaller trust companies.

For large trust companies, changing the liquidity requirement from 40 percent of restricted capital to 50 percent could make a big difference. Liquid assets tend to sacrifice either profitability or stability for the sake of liquidity. This bill could limit the ability of a trust company to participate in certain investment opportunities by requiring a large portion of the trust company's assets be invested in liquid assets.

NOTES:

The committee substitute differs from the bill as filed in that the substitute would not repeal Finance Code, sec. 184.101(b), which requires that a trust company have at least 40 percent of its restricted capital invested in liquid assets, and instead simply would amend that section.

The companion bill, SB 875 by Eltife, was passed by the Senate on April 9.

SUBJECT: Creating a process to rescind non-judicial foreclosure sales

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba

0 nays

WITNESSES: For — Brian Engel, Barrett Daffin Frappier Turner and Engel; Mark Hopkins; (*Registered, but did not testify*: Vicki Truitt, Mackie, Wolf, Zeintz and Mann; Daniel Gonzalez, Texas Association of Realtors; Chuck Rice, Texas Land Developers Association)

Against — Scott Gillen, Stewart Title; (*Registered, but did not testify*: Brian Yarbrough, JPMorgan Chase; Bruce Eppinger; Jocelyn Whisnant)

On — Karen Neeley, Independent Bankers Association of Texas; (*Registered, but did not testify*: Thomas Tallent, Cendera Funding, Inc.; Caroline Jones, Texas Department of Savings and Mortgage Lending; Robert Doggett, Texas Family Council; Pam McCollum and Julie Gross, Texas Mortgage Bankers Association)

DIGEST: CSHB 2066 would create a process to rescind a non-judicial foreclosure sale of property and specify the remedies available to the purchaser.

The bill would apply to a sale conducted under statutory provisions governing the sale of real property under a contract lien. A mortgagee, trustee, or substitute trustee could rescind a foreclosure sale within 15 days after the sale. A sale could be rescinded if:

- the statutory requirements for the sale were not satisfied;
- the default leading to the sale was cured before the sale;
- a receivership or dependent probate administration involving the property was pending at the time of the sale;
- a condition prescribed by the trustee or substitute trustee before the sale that was made available in writing to prospective bidders at the sale was not met;

- the mortgagee or mortgage servicer and the debtor agreed before the sale to cancel the sale based on a written agreement by the debtor to cure the default; or
- at the time of the sale, a court-ordered or automatic stay of the sale in a bankruptcy case filed by a person with an interest in the property was imposed on the property.

The bill would provide for two methods of rescinding the sale, depending on whether the deed of the property had been recorded in the county deed records. If the deed had not been recorded, the foreclosure sale could be rescinded by serving a written notice of rescission that described the reason for rescission. The notice would have to be sent by certified mail to the purchaser and each debtor who was obligated to pay the debt. Service of the notice would be complete when the notice was placed in the mail, postage was paid, and the notice was addressed to the recipient at their last known address. If the deed had been recorded in the county deed records, the sale could be rescinded by serving notices of rescission as described above and recording a copy of each notice in the county records.

CSHB 2066 would require the mortgagee to return to the purchaser the amount paid for the property at the sale within five business days after the foreclosure sale. The debtor would have to return to the trustee the amount of any excess proceeds received by the debtor from the sale. The rescission would restore the mortgagee and the debtor to their respective title, rights, and obligations under any instrument relating to the foreclosed property that existed immediately before the sale occurred.

A lawsuit challenging the effectiveness of a rescission would have to be filed within 90 days after the date the notices of rescission were served. This limitation would not apply to a lawsuit claiming damages resulting from the rescission.

The bill would limit the damages that could be awarded in a lawsuit challenging the rescission or claiming damages resulting from the rescission. If the foreclosure sale was rescinded because a stay was imposed in a bankruptcy case filed by a person with an interest in the property, the court could award as damages to the purchaser only the amount paid for the property that had not been refunded to the purchaser.

If the foreclosure sale was rescinded for any other reason, the court could award as damages only the amount paid for the property that had not been refunded to the purchaser, plus interest of 10 percent per year. In addition, the court could not order the reinstatement of the sale as a remedy for the purchaser.

CSHB 2066 would not prohibit the rescission of a sale by agreement of the affected parties on other terms or by a lawsuit to rescind a sale that was not covered by the bill.

The bill would take effect September 1, 2015, and would apply only to a foreclosure sale that occurred on or after that date.

SUPPORTERS SAY:

CSHB 2066 would create a reset button for foreclosure sales that never should have taken place. These situations currently have to be resolved through litigation or agreement by the parties involved. By outlining a clear procedure for non-judicial foreclosure sale rescissions, this bill would help those involved in the sale of foreclosed property avoid costly litigation. It also would provide clarity about the various parties' rights and roles during and after the rescission process.

When a non-judicial foreclosure sale occurs, sometimes there are facts that are not known by all of the parties involved, which can make it difficult to deliver clear title on the property. For example, on the day of the sale, the debtor could file for bankruptcy mere moments before the sale was scheduled to take place. This would cause an automatic stay to be imposed on the property, but the trustee might not learn about the bankruptcy filing until after the sale took place. Without this rescission mechanism, the only way to return all parties to the rights and positions they had immediately before the sale would be to file a lawsuit or have all parties agree on an outcome. However, lawsuits are expensive and time-consuming, and while the litigation is pending, the property is in limbo because it is not clear who the owner is. It also is difficult to get multiple parties with competing interests to agree on what should happen with the property. This bill would reduce the confusion and uncertainty that can surface when a foreclosure sale is rescinded.

The short window for rescission would limit any negative effects on the

bidding process. The 15 days provided by the bill would be a reasonable amount of time to learn of any issues with the title that were not discovered prior to the sale. There is an inherent risk in any transaction conveying property, especially a foreclosure sale, and this bill would provide a way for the third-party purchaser to be made whole within a short amount of time — five business days after the sale was rescinded. Additionally, the rescission only would rescind a sale that never should have taken place because the property title was not conveyable. The bill would offer a faster and less expensive solution to correct that mistake.

OPPONENTS SAY:

CSHB 2066 would discourage third-party purchasers from bidding on foreclosure properties because of the uncertainty that would be created by the possibility of rescission.

Third-party purchasers should be exempt from the rescission process because they are an important part of driving up bids to more accurately reflect the actual value of the property. Without third-party purchasers, properties would be sold for much less than they actually are worth because there would not be as much competition in the bidding process. While 15 days is an improvement from the 60-day period provided in the original bill, it is still too long for a third-party purchaser to be in limbo after purchasing a property.

NOTES:

CSHB 2066 would differ from the bill as filed in that the substitute would:

- decrease from 60 days to 15 the amount of time a foreclosure sale could be rescinded by a mortgagee, trustee, or substitute trustee;
- decrease from seven days to five the amount of time the mortgagee would have to return to the purchaser the amount paid for the property at the sale;
- require the debtor to return to the trustee, not the mortgagee, the amount of any excess proceeds received by the debtor from the sale; and
- specify that the bill would not prohibit the rescission of a sale by agreement of the affected parties on other terms or a lawsuit filed to rescind a sale that would not be covered by the bill.

SUBJECT: Repealing the 2 percent excise tax on fireworks

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — D. Bonnen, Bohac, Button, Darby, Murphy, Parker, Springer, C. Turner, Wray

2 nays — Y. Davis, Martinez Fischer

WITNESSES: For — Trey Blocker, State Firefighter's and Fire Marshals' Association (*Registered, but did not testify*: Eric Glenn, Texas Pyrotechnic Association)

Against — None

On — (*Registered, but did not testify*: Karey Barton and Tom Currah, Texas Comptroller of Public Accounts)

BACKGROUND: In 2001, the 77th Legislature enacted HB 3667 by Cook, which created the Rural Volunteer Fire Department Insurance Fund, an account within general revenue funded by a 2 percent sales tax on fireworks sold in the state. Under Government Code, subch. F money from this account may be directed to rural volunteer fire departments to pay for accidental death, disability, and workers' compensation insurance. The Texas Forest Service administers this account.

DIGEST: HB 2113 would eliminate the 2 percent tax on fireworks sales and replace the revenue from the tax currently directed to the Rural Volunteer Fire Department Insurance Fund with money from general revenue.

It would require the deposit of "an amount equal to the revenue derived from the collection of taxes at the rate of two percent on each sale at retail of fireworks" to the insurance fund. The comptroller would determine this amount based on statistical data "indicating the estimated or actual total receipts in this state from taxes imposed on sales at retail of fireworks."

The bill also would move the definition of "fireworks" from Tax Code,

sec. 161 to sec. 151.801(e).

This bill would take effect September 1, 2015, and would not affect tax liability accruing before the bill's effective date.

SUPPORTERS SAY:

HB 2113 would increase state revenues because the fireworks tax imposes a large opportunity cost on the comptroller's resources. Resources now spent administering and enforcing the fireworks tax would generate more revenue if redeployed to audit or enforcement activities for other taxes.

This bill would provide a stable funding source for the insurance fund, allowing the Texas Forest Service more flexibility and foresight when issuing decisions on requests for assistance. Allocations from general revenue would be more frequent and more reliable than funds deposited from the collection of the fireworks tax, which varies seasonally.

The fireworks tax represents a significant administrative and fiscal burden on fireworks retailers, many of which are small businesses run by families. This bill would allow them to allocate their resources more efficiently and keep more of their hard-earned profits.

Consumers, small businesses, and the state would be better off eliminating this unnecessary tax which generates too little revenue to offset the administrative opportunity cost.

OPPONENTS SAY:

HB 2113's elimination of the 2 percent tax on fireworks would have a direct negative impact on revenue, and the state should not cut taxes when it faces needs in critical areas like education and transportation.

NOTES:

The Legislative Budget Board's fiscal note states that HB 2113 would have a negative impact of $2,930,000 through fiscal 2016-17.

The Senate companion bill, SB 761 by Creighton, was approved by the Senate on March 31.

SUBJECT: Licensing, rules for boarding schools serving human trafficking victims

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Raymond, Rose, Keough, Naishtat, Peña, Price

2 nays — Klick, Spitzer

1 absent — S. King

WITNESSES: For — Todd Latiolais, Children at Risk; (*Registered, but did not testify*: Melody Chatelle, United Ways of Texas)

Against — Barbara-Jane Paris, AdvancED/SACS-CASI Commission on Accreditation and School Improvement; Laura Colangelo, Texas Private Schools Association

On — (*Registered, but did not testify*: Paul Morris, Department of Family and Protective Services)

BACKGROUND: Human Resources Code, sec. 42.041(a) requires those operating child care facilities to have a license issued by the Department of Family and Protective Services. Under Human Resources Code, sec. 42.041(b)(7) the requirement does not apply to schools, including those accredited by an accreditation body that is a member of the Texas Private School Accreditation Commission and operate primarily for educational purposes for prekindergarten and above.

Human Resources Code, sec. 42.002 defines child care facilities as facilities that for all or part of the day provide assessment, care, training, education, custody, treatment, or supervision for children who are not related to the owner or operator. A "general residential operation" is a type of child care facility that provides care for more than 12 children for 24 hours a day, including children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

DIGEST: CSHB 2360 would require certain residential educational facilities to

obtain a state license to operate a child care facility and to comply with all Department of Family and Protective Services rules and minimum standards that apply to general residential operations providing services to victims of human trafficking.

The requirement would apply to residential education facilities accredited by an accreditation body that is a member of the Texas Private School Accreditation Commission and operate primarily for educational purposes. These facilities would have to comply if:

- any time during the academic year more than either 25 children or 30 percent of the children at the facility were victims of human trafficking under the criminal offense in Penal Code, sec. 20A.02; and
- the facility provided or intended to provide specialized services to treat and support trafficking victims in addition to providing basic child care services.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 2360 is needed to ensure that children who are human trafficking victims and receive specialized services through boarding schools are being served appropriately. In 2013, the Legislature required the Health and Human Services executive commissioner to adopt minimum standards for general residential operations providing comprehensive services to victims of the crime of human trafficking. The rules were adopted in December 2014, and while they cover the majority of those providing residential services to these victims, they do not apply to residential schools offering the same type of services. The bill would close this loophole by applying licensing requirements and the minimum standards relating to trafficking victims to residential schools if they provide specialized services to a significant number of these victims.

It is important for residential schools providing specialized services for a significant number of human trafficking victims to meet minimum standards and use best practices. These victims often are physically, emotionally, and mentally injured by their exploitation through human and sex trafficking, and they have a unique set of needs. The practices and

procedures used in providing services must meet the victims' needs while keeping them safe from more exploitation. Licensing these programs and requiring them to meet minimum standards specific to trafficking services are important to ensure quality services. While such schools also may be accredited through a private school accreditation entity and may be doing a good job as a school, the standards imposed by that process may not be focused on the care and services needed by human trafficking victims, a necessity in these cases.

The bill is narrowly drawn to apply only to residential private schools that choose to offer these specialized services. A boarding school would have to both have a significant number of trafficking victims and provide or intend to provide specialized services. The threshold for complying with the bill would be set at 25 children or 30 percent of those in the facility as trafficking victims to be in line with the rule requiring that general residential operations meet the minimum standards. Schools not offering specialized services would not have to try to identify victims and would not fall under the bill's provisions.

OPPONENTS SAY:

CSHB 2360 would impose unnecessary and burdensome state regulations on a narrow category of private boarding schools that have students who are human trafficking victims. Schools targeted by the bill — those accredited through the Texas Private School Accreditation Commission — already are subject to strict standards and oversight. As schools, they should not also be subject to standards that are meant to apply to child care facilities that operate as general residential operations.

Requiring certain boarding schools to be licensed by the Department of Family and Protective Services and to meet the additional requirements for those that provide services to trafficking victims could burden them with unwarranted requirements. Additional layers of government regulation could be expensive, detract from their efforts to educate, and discourage them from educating trafficking victims. These schools are learning institutions that students and their families choose to attend. The only school that appears to currently fall under the bill does not take state funds and has a good record of educating and caring for trafficking victims.

Private schools can be held accountable by their accrediting entity, which sets rigorous and far-reaching standards. Schools go through extensive reviews that cover academics, health and safety, student well-being, and more. Concerns about a school or its program should be addressed to its accrediting agency, not by imposing a layer of regulation intended for other types of entities.

OTHER OPPONENTS SAY:

It could be difficult to know which facilities would fall under CSHB 2360. For example, it is unclear how a private school would know if it met the thresholds established by the bill for having a number of trafficking victims. Not all trafficking cases result in criminal convictions, cases may be pending, and not all human trafficking victims may self-identify.

NOTES:

The committee substitute revised the threshold for having to comply with the bill. Instead of requiring compliance if 50 percent of the children at the school were human trafficking victims, the substitute requires compliance if 25 children or 30 percent of the children at the facility are victims and if the school provides or intends to provide specialized services to trafficking victims. The committee substitute also added the requirement that the school be a residential facility.

SUBJECT: Alternate methods to satisfy high school graduation requirements

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Aycock, Allen, Bohac, Deshotel, Dutton, Farney, Galindo, González, Huberty, K. King, VanDeaver

0 nays

SENATE VOTE: On final passage, March 17 — 28-2 (Hancock, Nelson)

WITNESSES: For — Julie Cowan, Austin ISD Board of Trustees; Jodi Duron, Elgin ISD; Randy Willis, Granger ISD; Celina Moreno, MALDEF; Kim Cook, Dineen Majcher, and Theresa Trevino, Texans Advocating for Meaningful Student Assessment; Duncan Klussmann, Texas School Alliance; Monty Exter, The Association of Texas Professional Educators; and six individuals; (*Registered, but did not testify*: David Anderson, Arlington ISD Board of Trustees; Wayne Rotan, Glen Rose ISD; Dawson Orr, Highland Park ISD; Barbara Frandsen, League of Women Voters of Texas; Karen Rue, Northwest ISD; Mike Motheral, Small Rural School Finance Coalition; Ted Melina Raab, Texas American Federation of Teachers; Colby Nichols, Texas Association of Community Schools, Texas Rural Education Association; Casey McCreary, Texas Association of School Administrators; Grover Campbell, Texas Association of School Boards; Lonnie Hollingsworth, Texas Classroom Teachers Association; Janna Lilly, Texas Council of Administrators of Special Education; Yannis Banks, Texas NAACP; Kyle Ward, Texas PTA; Bob Popinski, Texas School Alliance; Gina Hinojosa; Susan Moffat)

Against — Drew Scheberle, Greater Austin Chamber of Commerce; Bill Hammond, Texas Association of Business; Courtney Boswell, Texas Institute for Education Reform; Zenobia Joseph; (*Registered, but did not testify*: Cameron Petty, Texas Institute for Education Reform)

On — Elizabeth Caudill, Dallas Regional Chamber; Anna Eastman, Houston ISD; Michael Barnes, Texas Center for Educational Policy at the School of Education at the University of Texas-Austin; Jan Friese, Texas

Counseling Association; (*Registered, but did not testify*: Rhonda Skillern-Jones, Houston ISD; Criss Cloudt, Gloria Zyskowski, Shannon Housson, and Monica Martinez, Texas Education Agency)

BACKGROUND:

Since 1986, Texas high school students have been required to pass a statewide assessment to be eligible to receive a high school diploma. The current exams, known as the State of Texas Assessments of Academic Readiness (STAAR), were first administered to students in 2012. The 83rd Legislature in 2013 enacted HB 5 by Aycock, which reduced STAAR end-of-course exams from 15 to five: Algebra I, English I and II, biology, and U.S. history. The bill also combined reading and writing into one exam for both English I and II.

All five STAAR end-of-course (EOC) exams are administered at the end of the fall, spring, and summer semesters, giving students three testing opportunities each year. The number of testing opportunities students have prior to graduation depends on when students take the corresponding course.

DIGEST:

CSSB 149 would establish an alternative method for high school seniors who have failed to pass one end-of-course (EOC) exam to satisfy state graduation requirements. For each of those students, school districts and open-enrollment charter schools would be required to establish an individual graduation committee to determine whether the student may qualify to graduate. The alternative method would apply to the current school year and the 2016-17 school year, and would expire September 1, 2017.

Committee members. The committee would include:

- the principal or principal's designee;
- the teacher of the corresponding course for the failed EOC exam;
- the student's school counselor; and
- the student's parent or person standing in parental relation, a designated advocate, or the student if the student is at least 18 years old or is an emancipated minor.

For the 2014-15 school year, school districts would establish procedures

for appointing alternative committee members, including a designated advocate, for those unable to serve. After September 1, 2015, the education commissioner would establish by rule a procedure for appointing alternative committee members.

Each district superintendent would establish procedures for convening an individual graduation committee. Districts would be required to provide an appropriate translator, if available, for a parent, person standing in parental relation, or designated advocate who is unable to speak English.

Districts would be required to make a good faith effort to timely notify parents, persons standing in parental relation, or designated advocates of the time, place, and purpose for convening the individual graduation committee. Notice would be provided in person, by mail, or email; be clear and easy to understand; and written in English, Spanish, or, to the extent practicable, in the native language of the parent, person standing in parental relation, or designated advocate.

Student requirements. To be eligible for this process, a student would have to successfully complete the required high school curriculum. A student's individual graduation committee would be required to recommend additional requirements for a student to complete. This would include additional remediation and completion of a project or portfolio that demonstrates proficiency in the subject area of the corresponding course. A student could submit coursework previously completed to satisfy a recommended additional requirement.

Committee decision. In determining whether a student is qualified to graduate, the committee would be required to consider the recommendation of the course teacher, the student's course grade, EOC exam score, performance on any additional requirements recommended by the committee, overall preparedness for postsecondary success, and school attendance rate.

Additionally, the committee would be required to consider:

- the number of hours of remediation the student has attended, including required attendance in a college preparatory course or

successful completion of a transitional college course in reading or math;

- the student's satisfaction of Texas Success Initiative college readiness benchmarks;
- the student's successful completion of a dual credit course in English, math, science, or social studies;
- the student's successful completion of a high school pre-AP, AP, or international baccalaureate course in English, math, science, or social studies;
- the student's rating of advanced high on the most recent high school administration of the Texas English Language Proficiency Assessment System;
- the student's score of 50 or greater on a College-Level Examination Program exam;
- the student's score on the ACT, SAT, or Armed Services Vocational Aptitude Battery;
- the student's completion of career and technical courses required to attain an industry-recognized credential or certificate; and
- any other academic information designated by the local school board.

A student could satisfy EOC requirements if, having failed to perform satisfactorily after retaking an EOC exam for Algebra I or English II, the student received a proficient score in the corresponding subject on the Texas Success Initiative diagnostic assessment.

After considering the required criteria, the committee could determine that the student was qualified to graduate and receive a high school diploma. The committee decision must be unanimous and would only apply if the student successfully completes the additional requirements set by the committee. The committee decision would be final.

For the 2014-15 school year, districts would establish timelines for committees to meet and make their decisions. After September 1, 2015, the commissioner would establish the timeline.

Regardless of the committee's action, districts would be required to

continue administering the corresponding EOC exam to the student. The result of retests would be considered student achievement indicators for accountability purposes.

Each district would be required to report through the Public Education Information Management System (PEIMS) the number of students each year who were awarded a diploma based on an individual graduation committee decision. The report would be due by December 1 of the following school year and the Texas Education Agency (TEA) would be required to post the information on its website.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSSB 149 would provide an alternative graduation method for juniors and seniors who did not pass one of their end-of-course (EOC) exams. The class of 2015 is the first required to pass State of Texas Assessments of Academic Readiness (STAAR) EOC exams in order to graduate. These students have been subjected to the phase-in of a more difficult testing system as well as legislatively mandated midstream changes to the number and design of the exams. Seventeen of the 20 states that require graduation tests provide an alternative option similar to the one contained in the bill.

According to the Texas Education Agency, 13,490 seniors are at risk of not graduating in June because they have failed one EOC exam. An additional 7,154 have failed two exams and another 7,533 have failed three exams. These students will have one final chance to pass exams in May before June graduations.

Some opponents have characterized the alternative system as a reward for students who have not worked hard, but this is not correct. Students would be eligible only if they passed all their required classes and met additional requirements for remediation and coursework set by the student's individual graduation committee. A committee would look at the student's relevant coursework and overall high school record and would have to make a unanimous decision that the student was qualified to graduate.

The bill also would respect teachers' professional judgment by placing the teacher of the corresponding course on the individual graduation committee. Contrary to charges by some opponents who believe the committees could be a rubber stamp, school personnel should be trusted to do the right thing for their students. School administrators testified that they would expect only about one-fourth to one-third of eligible students to receive diplomas through the alternative process.

The STAAR EOC exams are just one way of measuring student success and should not be the ultimate determination of a student's future. A committee could consider other legitimate measures of student achievement such as college placement exams or military vocational aptitude tests.

For some students there is a gap between test results and how students perform in class. Students appear to be having the most trouble with the writing components of the English I and English II exams. Some experts have criticized the way the writing prompts are presented and how student essays are graded. The writing test may be particularly difficult for students with dyslexia and other learning disabilities.

The lack of a high school diploma could prevent students who lacked a satisfactory score on just one EOC exam from entering college or a trade school program or joining the military. While these seniors could continue to take EOC exams beyond their expected graduation date, some likely would become frustrated and drop out.

OPPONENTS SAY:

If CSSB 149 were enacted, it would mark the first time in nearly three decades that the state eased its high school graduation test requirements. The bill would effectively create social promotion for high school seniors and make it easier for public schools to pass along unprepared students. By doing so, it could create incentives for students to neglect their EOC exams and devalue the diplomas of the 90 percent of students who had persevered and passed all their testing requirements.

Allowing students to bypass testing requirements would not help students succeed in college and the workplace. This is particularly true with writing, a critical skill demanded by most employers. The STAAR testing

system is designed to measure students' ability to think critically, which is essential to their ability to achieving a rewarding career. The 83rd Legislature in 2013 reduced the number of EOC exams from 15 to five to reduce the amount of high school testing. There is no compelling reason for further retreat.

The bill would further weaken the state's public school accountability system, which already lists 90 percent of campuses as meeting or exceeding expectations. The slow phase-in of STAAR tests has created a system where students must answer fewer than half of questions correctly on some exams in order to pass. Texas must have a clear, accurate picture of how students are truly faring in order to determine education policies.

When TEA phased in previous testing programs, including the Texas Assessment of Knowledge and Skills, a similar percentage of students — about 10 percent — initially were denied diplomas. Those students were required to keep retesting, and many eventually did succeed.

Texas law allows for the use of similar committees to decide whether 5th grade and 8th grade students who failed STAAR should be promoted. It appears that the vast majority of these committees have promoted students to 6th and 9th grade. Similar results could be expected by the graduation committees, particularly because schools would be held accountable for students who failed to graduate.

The bill could result in an unfunded mandate to school districts, especially those required to provide translators for non-English-speaking parents. It would add more work for school administrators and teachers, who would be required to quickly form committees, gather student records, and make decisions.

OTHER OPPONENTS SAY:

Texas should end its requirement that students pass five EOC exams to graduate. Thirty states have no requirement for a graduation test, and such a test is not required by federal law. Eliminating assessment requirements for graduation and reducing the number of required high school tests to one for reading and one for math as mandated by federal law would save the state millions of dollars spent on testing and retesting and would reduce the high-stakes nature of STAAR.

NOTES:

The committee substitute to SB 149 differs from the Senate engrossed version in that the committee substitute would apply to students who had failed no more than one course, as opposed to two subjects in the Senate version.

A similar bill, HB 2444 by Huberty, was referred to the House Public Education Committee on March 13.